

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In Re: Lynda S. Thomas : Case No. 14-56122
Debtor. : Chapter 7
Judge Preston

MOTION TO AVOID LIEN WHICH IMPAIRS DEBTOR'S EXEMPTIONS

The Debtor, by and through counsel, hereby moves this Court for an Order avoiding the judgment liens of Midland Funding LLC and State of Ohio, Department of Taxation to the extent that they impair the exemption which the Debtor claims under the provisions of Ohio Revised Code Section 2329.66(A)(1) and by the workings of 11 U.S.C. Sec. 522(f) and the judgment liens of Midland Funding LLC and State of Ohio, Department of Taxation in their entirety as they impair the exemption which the Debtor claims under the provisions of Ohio Revised Code Section 2329.66(A)(1) and by the workings of 11 U.S.C. Sec. 522(f).

MEMORANDUM IN SUPPORT

1. Midland Funding LLC obtained judgment against the Debtor's deceased husband on August 19, 2010 and recorded their judgment lien on June 10, 2011. (See Exhibit A).

2. State of Ohio, Department of Taxation filed their judgment lien against Debtor and her deceased husband on August 13, 2012. (See Exhibit B).

3. The lien has potentially affixed to all real estate of the Debtor, including that at 1610 Suqulak Trail, London, Ohio 43140 and which is the residence of the Debtor, full title and legal description of which is attached as Exhibit C.

4. The property in question has a fair market value of one hundred fifty-seven thousand two hundred forty dollars (\$157,240.00). (See Exhibit D).

5. The property has a valid first mortgage to Colonial Savings with a payoff in the amount of one hundred forty-eight thousand eight hundred seventy-eight and 58/100 dollars (\$148,878.58) (See Exhibit E).

6. The judicial liens of Midland Funding LLC and State of Ohio, Department of Taxation, when added

to the valid first mortgage upon the real estate in question, impairs the value of the exemption to which the Debtor would be entitled to under Ohio Revised Code Section 2329.66(A)(1) and 11 U.S.C. Sec. 522(b) to the extent that it exceeds the value of the property. The judicial liens of Midland Funding LLC and State of Ohio, Department of Taxation impair the value of the exemption to which the Debtor would be entitled to under Ohio Revised Code Section 2329.66(A)(1) and 11 U.S.C. Sec. 522(b) in their entirety.

7. The Debtor is permitted to avoid a lien which impairs her rights to exemptions in property by the operation of 11 U.S.C. Sec. 522(f).

11 U.S.C. Sec. 522(f) defines impairment as follows:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of -

(i) the lien,

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

In the present case, the Debtor is entitled, by reference to the Code to claim the exemption and, by the mathematical formula in Sec. 522(f), is entitled to avoid any judicial liens which exceed the value of her real estate, less the consensual mortgage and her claimed exemption.

WHEREFORE, Debtor respectfully requests that this Court order the above described liens be avoided to the extent that they impair the Debtor's right to claim an exemption under O.R.C. Sec. 2329.66(A)(1) and such other relief as the Court deems just.

Respectfully submitted,

/s/Christopher Gallutia
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Motion to Avoid Lien was sent, by regular U.S. mail, postage prepaid, this 5th day of May, 2015 to the U.S. Trustee, 170 N High St, Suite 200, Columbus, OH 43215, Mr. David M. Whittaker, Esq., Case Trustee, 100 S Third St, Columbus, OH 43215, Midland Funding LLC, 8875 Aero Drive, San Diego, CA 92123, Mr. Jacob Figelman, Attorney for Midland Funding LLC, 1100 Superior Avenue, 19th Floor, Cleveland, OH 44114-2531, Mr. Jonathan Clark, Chief Financial Officer, Midland Funding LLC, 8875 Aero Drive, San Diego, CA 92123, Ohio Attorney General, 30 E Broad St, 14th Floor, Columbus, OH 43215, and State of Ohio, Department of Taxation, 150 E Gay St, 21st Floor, Columbus, OH 43215. Unless a party in interest files with the Court and serves upon the undersigned a Memorandum in opposition within twenty-one (21) days from the date of this Motion, the undersigned will file with the Court an Order for the proposed relief requested.

/s/Christopher Gallutia
Christopher Gallutia (0011775)
Attorney for Debtor

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NOTICE OF MOTION OR OBJECTION

Lynda S. Thomas, by her attorney, has filed papers with the Court to obtain an Order avoiding lien.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to grant the relief sought in the motion/objection, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion/objection**, you must file with the Court a response explaining your position by mailing your response by regular U.S. mail to Clerk, The United States Bankruptcy Court, 170 North High Street, Columbus OH 43215 OR your attorney must file a response using the Court's ECF system.

The Court must **receive** your response on or before the date above.

You must also send a copy of your response either by (1) the Court's ECF system or (2) by regular U.S. mail to:

Christopher Gallutia
Attorney for Debtor
7668 Slate Ridge Blvd
Reynoldsburg, OH 43068

Mr. David M. Whittaker
Chapter 7 Trustee
100 S Third St
Columbus, OH 43215

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion/objection and may enter an order granting the relief.

/s/Christopher Gallutia
Christopher Gallutia (0011775)
Attorney for Debtor
7668 Slate Ridge Blvd
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(614) 575-1145